

**AMERICAN FAMILY MUTUAL INSURANCE COMPANY
6000 AMERICAN PARKWAY
MADISON, WISCONSIN 53783-2111**

NAIC COMPANY CODE 19275

WORKERS' COMENSATION INSURANCE

AS OF DECEMBER 31, 2004

**EXAMINATION PERFORMED BY
INDEPENDENT CONTRACTORS
FOR
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

March 1, 2006

The Honorable David F. Rivera
Commissioner of Insurance
State of Colorado
1560 Broadway, Suite 850
Denver, Colorado 80202

Commissioner Rivera:

In accordance with Sections 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, auditing and unit statistical card practices of the workers' compensation insurance business of American Family Mutual Insurance Company has been conducted. The Company's records were examined at its regional office located at 4802 Mitchell Avenue, St. Joseph, Missouri 64507-2500.

The examination covered a two and one-half year period from July 1, 2002 to December 31, 2004.

A report of the examination of American Family Mutual Insurance Company is respectfully submitted.

Kathleen M. Bergan, CIE

Kenneth C. Lang, AIE

**MARKET CONDUCT
EXAMINATION REPORT
OF
AMERICAN FAMILY MUTUAL INSURANCE COMPANY**

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COMPANY PROFILE

American Family Mutual Insurance Company (hereinafter referred to as “the Company”) commenced business on October 2, 1927, in Madison, Wisconsin and was initially known as Farmers Mutual Insurance Company. In 1963, Farmers Mutual changed its name to American Family Mutual Insurance Company. Currently, there are nine companies that comprise the American Family Insurance Group.

The Company is a mutual multi-line insurance provider which offers products to both individuals and businesses. The Company sells their products through a network of exclusive employee agents throughout Colorado and the United States.

The Company is currently licensed in sixteen states as well as Colorado. Those states are: Arizona, Idaho, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah and Wisconsin. The Company was licensed to write private passenger auto in the State of Colorado in 1966 and workers’ compensation in 1975.

The Company’s workers’ compensation direct written premium in 2004 was \$8,240,000 with a .98% market share.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This examination is in accordance with Colorado insurance law Section 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work products developed in its production, are the sole property of the Colorado Division of Insurance.

The purpose of this examination was to determine the Company's compliance with Colorado insurance laws and with generally accepted operating principles related to workers' compensation insurance. Examination information contained in this report should serve only those purposes. The conclusions and findings of this examination report are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners (NAIC) and the Colorado Division of Insurance. In reviewing material for this report, the examiners relied primarily on records and materials maintained by the Company. The examination period covered the period from July 1, 2002 to June 30, 2003 for audited policies on which unit statistical cards were due to have been filed. A sample of policies from calendar year 2004 was also reviewed to determine the Company's current rating and underwriting practices. No claim review was performed on 2004 policies because the reporting period of claims to NCCI was not yet due.

File sampling was based on a review of audited policies with accompanying claims, and claims for policies with large and small deductibles. A sample of 2004 policies was also reviewed for rating and underwriting practices. Samples were systematically selected using ACL software and computer data files provided by the Company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners (NAIC). Upon review of each sampled policy and claim, any concerns or discrepancies were noted on comment forms and these comment forms were delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree or disagree and justify the Company's noted action. The report of the examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report as references to any practices, procedures, or files manifesting no errors were omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines. When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination, and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exceptions percentages less than five percent (5%) were also included.

This report contains information regarding exceptions to Colorado insurance laws. The examination included review of the following areas:

- A. Company Operations/Management
- B. Underwriting and Rating
 - 1. Policies with Experience modifiers
 - 2. Policies without Experience modifiers
 - 3. Policies in force during 2004
 - 4. Cancellations
- C. Unit Statistical Plan Reporting
 - 1. Premium audits
 - 2. Claims comparison
 - a. Claims on policies with Experience Modifiers
 - b. Claims on policies with deductibles

All unacceptable or non-complying practices may not have been discovered during the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance of such practices. Examination findings may result in administrative action by the Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's Workers' Compensation policies, audits, billings and Unit Statistical reporting practices to determine compliance with NCCI Manual Rules and Colorado insurance laws as outlined in Exhibit 1.

Exhibit 1

Law	Subject
Section 10-3-1104	Unfair methods of competition and unfair or deceptive acts or practices
Section 10-4-110	Notice of intent prior to nonrenewal of certain policies of insurance.
Section 10-4-110.5	Notice of intent prior to unilateral increase in premium or decrease in coverage previously provided of certain policies of insurance.
Section 10-4-113	Exemptions.
Section 10-4-401	Purpose – applicability.
Section 10-4-403	Standards for rates-competition-procedure-requirement for independent actuarial opinions regarding 1991 legislation.
Section 10-4-413	Records required to be maintained.
Section 10-4-416	Prohibiting changes in rates or coverages.
Section 10-4-421	Notice of rate increases and decreases.
Regulation 1-1-7	Market Conduct Record Retention
Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests.
Regulation 5-1-10	Rate and Rule Filing Submissions
Regulation 5-1-11	Risk Modification Plans
Regulation 5-3-1	Workers' Compensation Risk Management Regulation
Regulation 5-3-2	Workers' Compensation Insurance Data Reporting Regulation
Regulation 5-3-3	Concerning Workers' Compensation Deductible Policies in Excess of \$5,000
Regulation 5-3-4	Concerning Standards for Not-At-Fault Motor Vehicle Accidents Under Workers' Compensation, Loss Limitation in Calculating Experience Modifications and Distribution of Losses in Excess of The Loss Limitation
Regulation 5-3-5	Workers' Compensation Deductible Reimbursement

Company Operations/Management

The examiners reviewed Company implementation and quality controls, record retention, and timely cooperation with the examination process.

Contract Forms and Endorsements

Forms and endorsements used by the Company in writing Workers' Compensation policies containing Colorado exposures are those filed with the Colorado Division of Insurance by the National Council on Compensation Insurance (NCCI) and no review of these forms was made.

Audited Policies

For the period under examination, the examiners used ACL software to obtain a random selection of the following underwriting samples to determine compliance with underwriting and rating requirements:

Review Lists	Population	Sample Size	Percentage to Population
Policies with Experience Modifiers	635	50	8%
Policies without Experience Modifiers	4,041	50	1%
Current Policies	4,676	50	1%
Cancelled policies	1,659	50	3%

Underwriting and Rating

The examiners reviewed the rate and rule filings, statistical justifications, and methodology submitted to the Colorado Division of Insurance for the period under examination. This information was then compared against samples of audited policies with experience modifiers and audited policies without experience modifiers to determine compliance with NCCI loss costs, filed loss costs factors, audited payroll information, experience modifiers, schedule rating, officer and sole proprietor payrolls, and Colorado cost containment and designated medical provider requirements.

Unit Statistical Card Reporting

For the period under examination, the examiners systematically selected the following samples of claims from audited policies with experience modifiers and from policies with large and small deductibles to determine compliance with NCCI unit statistical card reporting requirements:

Review Lists	Population	Sample Size	Percentage to Population
Claims from Audited Policies with Experience Modifiers	261	18	7%
Claims from policies with deductibles	159	50	31%

EXAMINATION REPORT SUMMARY

The examination resulted in a total of four (4) issues arising from the Company's apparent failure to comply with Colorado insurance laws that govern all property and casualty insurers operating in the State of Colorado. These issues involved the following Company operations:

Company Operations/Management

In the area of company operations/management, one (1) compliance issue was addressed in this report. This issue arises from Colorado statutory and regulatory requirements that must be followed when writing workers' compensation policies containing Colorado exposures. It is recommended that the Company review its company operations/management procedures and make the necessary changes to ensure future compliance with applicable Colorado insurance laws.

The one compliance issue addressed in this phase is as follows:

- Failure of the Company, in some cases, to maintain required records when writing workers' compensation policies containing Colorado exposures.

Underwriting and Rating

In the area of underwriting and rating, two (2) compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements that must be followed when writing workers' compensation policies containing Colorado exposures. It is recommended that the Company review its underwriting and rating procedures and make the necessary changes to ensure future compliance with applicable Colorado insurance laws.

The two (2) compliance issues addressed in this phase are as follows:

- Failure of the Company to require insureds to indicate on a form their awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and to retain this form in the insureds' underwriting files.
- Failure of the Company, in some cases, to require insured business entities to indicate on a form their awareness of the premium differential available when an insured selects a designated medical provider and to retain this form in the insureds' underwriting files.

Unit Statistical Card Reporting

In the area of unit statistical card reporting, one (1) compliance issue was addressed in this report. An issue arises from Colorado statutory and regulatory requirements that must be followed when writing workers' compensation policies containing Colorado exposures. It is recommended that the Company review its unit statistical card reporting procedures and make the necessary changes to ensure future compliance with applicable Colorado insurance law.

The one (1) compliance issue addressed in this phase is as follows:

- Failure of the Company to correctly report unit statistical card information to NCCI when writing workers compensation policies containing Colorado exposures.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of any previous Market Conduct Examinations are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

MARKET CONDUCT EXAMINATION REPORT

PERTINENT FACTUAL FINDINGS

AMERICAN FAMILY MUTUAL INSURANCE COMPANY

COMPANY OPERATIONS/MANAGEMENT
FINDINGS

Issue A: Failure of the Company, in some cases, to maintain required records when writing workers' compensation policies containing Colorado exposures.

Section 10-4-413, C.R.S., Records required to be maintained, states in part:

(1) Every insurer...shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this part 4 applicable to it...Such records shall be maintained in an office within this state or shall be made available for examination or inspection by the commissioner at any time, upon reasonable notice.

Colorado Regulation 1-1-7, Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states in part:

Section 4. Records Required For Market Conduct Purposes

A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claims practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records,... Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.

Section 5. Policy Records

A. The following records shall be maintained: A policy record shall be maintained for each policy issued. Policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to coverage... Policy records need not be segregated from the policy records of other states so long as the records are readily available to market conduct examiners as required under this regulation.

B. Policy records shall include at least the following:...

(2) Any declaration pages (the initial page and any subsequent pages), the insurance contract, any certificates evidencing coverage under a group contract, any endorsements or riders associated with a policy, any termination notices, and any written or electronic correspondence to or from the insured pertaining to the coverage. A separate copy of the record need not be maintained in the individual policy to which the record pertains, provided it is clear from the insurer's other

records or systems that the record applies to a particular policy and that any data contained in the record relating to that policy, as well as the actual policy, can be retrieved or recreated;...

(4) Any guidelines, manuals or other information necessary for the reconstruction of the rating, underwriting, and claims handling of the policy. Presentation at the site of a market conduct examination of a single copy of each of the above shall satisfy this requirement. If a rating, underwriting, or claims handling record is computer based, the records used to input the information into the computer system shall also be available to the examiners. These types of records include, but are not limited to, the application, where applicable, the policy form including any amendments or endorsements, rating manuals, underwriting rules, credit reports or scores, claims history reports, previous insurance coverage reports, e.g., MIB questionnaires, internal reports, loans and underwriting and rating notes.

Reference is also made to Section 8-41-202, C.R.S., Rejection of coverage by corporate officers and others, which states in part:

(1) Notwithstanding any provision of article 40 to 47 of this title to the contrary, a corporate officer of a corporation or a member of a limited liability company may elect to reject the provisions of articles 40 to 47 of this title. If so elected, said corporate officer or member shall provide written notice on a form approved by the division through a rule promulgated by the director of such election to the workers' compensation insurer of the employing corporation or company, if any, by certified mail. If there is no worker's compensation insurance company, the notice should be provided to the division by certified mail. Such notice shall become effective the day following the receipt of said notice by the insurer or the division.

(2) A corporate officer's or member's election to reject the provisions of articles 40 to 47 of this title shall continue in effect so long as the corporation's or company's insurance policy is in effect or until said officer or member, by written notice to the insurer, revokes the election to reject said provisions.

(4)(a) "Corporate officer" means chairperson of the board, president, vice-president, secretary, or treasurer who is an owner of at least ten percent of the stock of the corporation and who controls, supervises, or manages the business affairs of the corporation, as attested to by the secretary of the corporation at the time of the election.

(b) "Member" means an owner of at least ten percent of the membership interest of the limited liability company at all times and who controls, supervises, or manages the business affairs of the limited liability company.

The following charts illustrate the significance of errors versus the populations and samples examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JULY 1, 2002 TO JUNE 30, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
635	50	50	100%

An examination of fifty (50) policies, representing 8% of all workers' compensation audited policies with experience modifiers which contained Colorado exposures, written by the Company during the period July 1, 2002 to June 30, 2003, showed fifty (50) exceptions (or 100% of the sample) where required records were not maintained. None of the policy files reviewed contained a signed and executed officer exclusion form.

**WORKERS' COMPENSATION POLICIES WITHOUT EXPERIENCE MODIFIERS
WRITTEN JULY 1, 2002 TO JUNE 30, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
4,041	50	48	96%

An examination of fifty (50) policies, representing 1% of all workers' compensation audited policies without experience modifiers which contained Colorado exposures, written by the Company during the period July 1, 2002 to June 30, 2003, showed forty-eight (48) exceptions (or 96% of the sample) where the policy file did not contain a signed and executed officer exclusion form.

WORKERS' COMPENSATION POLICIES – 2004 CALENDAR YEAR

Population	Sample Size	Number of Exceptions	Percentage to Sample
4,676	50	50	100%

An examination of fifty (50) policies, representing 1% of all workers' compensation policies written by the Company during the 2004 calendar year which contained Colorado exposures were examined to determine the Company's current underwriting and rating practices. This sample showed fifty (50) exceptions (or 100% of the sample) where the policy files did not contain a signed and executed officer exclusion form.

All officers and other management personnel have the option of rejecting coverage under the employer's workers' compensation policy. In order to reject coverage, the individual is required to complete and send a Division of Workers' Compensation "Rejection of Coverage" form (WC 43) or a substantial equivalent, to the insurance carrier by certified mail. These forms are required to be notarized and kept on file with the insurance carrier. Through the review of underwriting files it was determined that the Company did not require these officer exclusion forms and instead used the written application form as proof for exclusion.

Recommendation # 1:

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Section 10-4-413, C.R.S., and Colorado Regulation 1-1-7. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance which will ensure that it will maintain required records when writing workers' compensation policies containing Colorado exposures in compliance with Colorado insurance law.

UNDERWRITING AND RATING
FINDINGS

Issue B: Failure of the Company to require insureds to indicate on a form their awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and to retain this form in the insureds' underwriting files.

Colorado Regulation 5-1-11, Risk Modification Plans, promulgated pursuant to the authority of Section 10-1-109, 10-4-401, 10-4-403, 10-4-404, and 10-4-408, C.R.S., states in part:

(III) RULES...

(D) Workers' Compensation Cost Containment Disclosures

All workers' compensation insurers, including the Colorado Compensation Insurance Authority, shall disclose the availability of cost containment certification by the Colorado Workers' Compensation Cost Containment Board and the potential premium savings on the face of the insurance policy or in a separate disclosure form attached as an addendum to the policy. Such disclosure applies regardless of whether or not a risk is experience or schedule rated. *Insurers shall require that the insured business entity indicate, on a form developed by the insurer, which states that the business entity is aware of the premium dividend if the business entity's risk management program is certified by the Colorado Cost Containment Board. This form shall be made part of the insured business entity's underwriting file.* [Emphasis added.]

The following charts illustrate the significance of errors versus the populations and samples examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JULY 1, 2002 TO JUNE 30, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
635	50	50	100%

An examination of fifty (50) policies, representing 8% of all workers' compensation audited policies with experience modifiers which contained Colorado exposures, written by the Company during the period July 1, 2002 to June 30, 2003, showed fifty (50) exceptions (or 100% of the sample) where the Company did not require insureds to indicate on a form their awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and to retain this form in the insureds' underwriting files. These potential savings are usually expressed as percentages.

**WORKERS' COMPENSATION POLICIES WITHOUT EXPERIENCE MODIFIERS
WRITTEN JULY 1, 2002 TO JUNE 30, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
4,041	50	50	100%

An examination of fifty (50) policies, representing 1% of all workers' compensation audited policies without experience modifiers which contained Colorado exposures, written by the Company during the period July 1, 2002 to June 30, 2003, showed fifty (50) exceptions (or 100% of the sample) where the Company did not require insureds to indicate on a form their awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and to retain this form in the insureds' underwriting files. These potential savings are usually expressed as percentages.

WORKERS' COMPENSATION POLICIES – 2004 CALENDAR YEAR

Population	Sample Size	Number of Exceptions	Percentage to Sample
4,676	50	50	100%

An examination of fifty (50) policies, representing 1% of all workers' compensation policies written by the Company during the 2004 calendar year which contained Colorado exposures were examined to determine the Company's current underwriting and rating practices. This sample showed fifty (50) exceptions (or 100% of the sample) where the Company did not require insureds to indicate on a form their awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and to retain this form in the insureds' underwriting files. These potential savings are usually expressed as percentages.

Recommendation # 2:

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 5-1-11. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance which will ensure that it will require insureds to indicate on a form their awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and that the Company will retain this form in the insureds' underwriting files in compliance with Colorado insurance law.

Issue C: Failure of the Company, in some cases, to require insured business entities to indicate on a form their awareness of the premium differential available when an insured selects a designated medical provider and to retain this form in the insureds' underwriting files.

Colorado Regulation 5-1-11, Risk Modification Plans, promulgated pursuant to the authority of Section 10-1-109, 10-4-401, 10-4-403, 10-4-404, and 10-4-408, C.R.S., states in part:

(III) RULES...

(D)...On an annual basis, all workers' compensation insurers, including the Colorado Compensation Insurance Authority, shall disclose the premium differential on the face of the insurance policy or in a separate disclosure form attached as an addendum to the policy when the policyholder has selected a designated medical provider. Such disclosure applies regardless of whether a risk is experience rated or schedule rated. *Insurers shall require that the insured business entity indicate, on a form developed by the insurer, which states that the business entity is aware of the premium differential for selecting a designated medical provider. This form shall be made part of the insured business entity's underwriting file.* [Emphases added.]

There were no errors found on policies with experience modifiers.

The following charts illustrate the significance of errors versus the populations and samples examined:

**WORKERS' COMPENSATION POLICIES WITHOUT EXPERIENCE MODIFIERS –
WRITTEN JULY 1, 2002 TO JUNE 30, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
4,041	50	7	14%

An examination of fifty (50) policies, representing 1% of all workers' compensation audited policies without experience modifiers which contained Colorado exposures, written by the Company during the period July 1, 2002 to June 30, 2003, showed seven (7) exceptions (or 14% of the sample) in which no form on which insured business entities had indicated their awareness of the premium differential given for selecting a designated medical provider was found in the insureds' underwriting files. This premium differential is generally expressed as a percentage.

WORKERS' COMPENSATION POLICIES – 2004 CALENDAR YEAR

Population	Sample Size	Number of Exceptions	Percentage to Sample
4,676	50	29	58%

An examination of fifty (50) policies, representing 1% of all workers' compensation policies written by the Company during the 2004 calendar year which contained Colorado exposures were examined to determine the Company's current underwriting and rating practices. This sample showed twenty-nine (29) exceptions (or 58% of the sample) where the Company did not require insured business entities to indicate on a form their awareness of the premium differential given for selecting a designated medical

provider and retain this form in insureds' underwriting files. This premium differential is generally expressed as a percentage.

Recommendation # 3:

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 5-1-11. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance which will ensure that it will require insured business entities to indicate their awareness of the premium differential available if they select a designated medical provider and to retain this form in the insured's underwriting file in compliance with Colorado insurance law.

UNIT STATISTICAL CARD REPORTING
FINDINGS

Issue D: Failure of the Company to correctly report unit statistical card information to NCCI when writing workers compensation policies containing Colorado exposures.

Section 10-4-402, C.R.S., Definitions, states in part:

(3) “Rating organization” means every person, other than an admitted insurer, which has as its object or purpose the making of pure premium rates, rating plans, or rating systems...

Section 10-4-404, C.R.S., Rate administration, states in part:

(1) The commissioner shall promulgate rules and regulations which shall require each insurer to record and report its loss and expense experience and such other data, including reserves, as may be necessary to determine whether rates comply with the standards set forth in Section 10-4-403. Every insurer or rating organization shall provide such information and in such form as the commissioner may require. No insurer shall be required to record or report its loss or expense experience on a classification basis that is inconsistent with the rating system used by it. The commissioner may designate one or more rating organizations or advisory organizations to assist him in gathering and in compiling such experience and data. No insurer shall be required to record or report its experience to a rating organization unless it is a member of such organization.

NCCI’s Workers Compensation Statistical Plan Manual states in part:

Part IV-LOSS DATA

9. Incurred Indemnity and Incurred Medical

Losses must be reported split into their indemnity and medical components.

Report separately, as of the valuation date, the total of all paid and outstanding indemnity and all paid and outstanding medical for each claim or group of claims.

Part 4-Loss Information

8. Medical Incurred Amounts

Report the incurred medical loss amounts in connection with medical claims. Incurred medical should include:

- The total of all paid and outstanding medical amounts
- Reserves for future payments
- All payments to doctors and hospitals
- Physical rehabilitation costs
- Medical loss items, such as transportation expenses associated with medical treatment
- Bonuses or return-to-work incentives paid by the carrier to the Medical Care Provider when the policy is written with contract medical
- Incurred medical should be reduced by subrogation recovery.

Incurred medical should not include any claim expense. [Emphasis added.]

The following charts illustrate the significance of errors versus the populations and samples examined:

**CLAIMS FOR WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
261	20	20	100%

An examination of twenty (20) claims, representing 8% of the claims for the workers' compensation audited policies with experience modifiers examined that did not have deductibles, showed 100% of the sample in which the Company incorrectly reported medical and indemnity payments by including the allocated loss adjustment expense (ALAE) amount in the pure claim payment reporting field on the unit statistical card.

**DEDUCTIBLE CLAIMS FOR WORKERS' COMPENSATION POLICIES
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
159	50	50	100%

An examination of fifty (50) deductible claims for audited policies, representing 31% of all workers' compensation audited policies with deductibles examined, showed fifty (50) exceptions (or 100% of the sample) in which the Company reported incorrect claims information on the insured's unit statistical card. All fifty exceptions showed the reporting of allocated loss adjustment expenses (ALAE) as part of the indemnity and medical reporting field rather than in the field provided for reporting expenses associated with claim handling, such as case management and cost containment fees for medical claims, utilization review attorney fees, arbitration fees and other related costs associated with claim procedures.

The allocated loss adjustment expenses (ALAE) should be reported separately as required by the NCCI. Since the Company included loss adjustment expenses on the "paid" portion of medical and indemnity that should not have included the expense part of the claim on the Unit statistical card, the Company overstated the amount of the actual claim paid as reported to the NCCI. This appears to be a significant error due to the fact that the NCCI derives the basis for Colorado workers' compensation rates for every classification as well as the experience modification, on actual medical and indemnity claim payments and does **not** include the loss adjustment expenses associated with a claim. Since the Unit Statistical card provides a field called "ALAE" for the reporting of data associated with loss adjustment expenses, it is recommended that the Company contact NCCI to report the inaccuracies by separating the loss adjustment expenses from the pure claim paid data field, provide accurate medical and indemnity claim loss data which would include retroactively correcting these reporting errors to accurately reflect the actual claim payments made by the Company. In addition, the Company should contact the NCCI for assistance in correcting and resolving the significant data reporting issues relating to claim payments and loss adjustment expense so that the NCCI has accurate data to extrapolate the necessary information when developing statistical data for Colorado exposures. In addition, the Company should report the corrective measures taken as well as the disposition of the accuracy of reporting to the NCCI.

Recommendation # 4

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Section 10-4-404, C.R.S. If the Company is unable to provide such documentation, it should be required to provide written evidence to the Colorado Division of Insurance that it will correctly report unit statistical card information to NCCI in compliance with Colorado insurance law.

**SUMMARY OF RECOMMENDATIONS
EXAMINATION REPORT ON****AMERICAN FAMILY MUTUAL COMPANY**

	ISSUE	RECOMMENDATION	PAGE #
A	Failure of the Company, in some cases, to maintain required records when writing workers' compensation policies containing Colorado exposures.	1	16
B	Failure of the Company to require insureds to indicate on a form their awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and to retain this form in the insureds' underwriting files.	2	19
C	Failure of the Company, in some cases, to require insured business entities to indicate on a form their awareness of the premium differential available when an insured selects a designated medical provider and to retain this form in the insureds' underwriting files.	3	21
D	Failure of the Company to correctly report unit statistical card information to NCCI when writing workers' compensation policies containing Colorado exposures.	4	25

<p>Independent Market Conduct Examiners Kathleen M. Bergan, CIE & K. C. Lang, AIE participated in this examination and in the preparation of this report.</p>
